

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 3, 2006

IN RE:

PETITION OF TENNESSEE INDEPENDENT  
TELECOMMUNICATIONS GROUP, LLC D/B/A  
IRIS NETWORKS FOR ARBITRATION OF A  
COLLOCATION AGREEMENT WITH CITIZENS  
TELECOMMUNICATIONS COMPANY OF  
TENNESSEE L.L.C. OR, IN THE ALTERNATIVE,  
FOR RESOLUTION OF COMPLAINT AGAINST  
CITIZENS REGARDING DENIAL OF  
COLLOCATION REQUEST

DOCKET NO.  
04-00310

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ORDER APPROVING COLLOCATION AGREEMENT

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This matter came before Chairman Ron Jones, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on July 11, 2005, to consider, pursuant to 47 U.S.C. § 251-252, the *Agreement for Collocation* negotiated between Tennessee Independent Telecommunications Group L.L.C. d/b/a Iris Networks ("Iris") and Citizens Telecommunications Company of Tennessee L.L.C. ("Citizens") filed on May 12, 2005. Collocation is one of the elements of interconnection in 47 U.S.C. § 251, and as such collocation agreements require state approval pursuant to 47 U.S.C. § 252.

**Background**

On September 23, 2004, Iris filed a *Petition* requesting that the Authority arbitrate the issue of whether, pursuant to 47 U.S.C. § 251(c), Citizens has an obligation to allow Iris to collocate Iris's equipment necessary for interconnection with Citizens' network in Citizens'

Cookeville central office. In the alternative, Iris requested that Citizens be ordered to negotiate a collocation agreement with Iris. Iris stated that Citizens has a duty to provide physical collocation to Iris pursuant to 47 U.S.C. § 251(c)(6). As support for its argument, Iris referred to 47 U.S.C. § 251(c)(2) which states that a local exchange carrier has “the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network . . . .”

On October 25, 2004, Citizens filed the *Citizens Telecommunications Company of Tennessee L.L.C.’s Response to Petition and Motion to Dismiss*. There, Citizens argued that Iris is not entitled to collocation of its equipment with Citizens because Iris is neither a competitive local exchange carrier (“CLEC”) nor is it acting as a competitive access provider (“CAP”) for CLECs to exchange local traffic or access unbundled network elements (“UNEs”). Further, Citizens asserted that Iris is not a telecommunications carrier as the term is defined in 47 U.S.C. § 153(44)<sup>1</sup> and used in 47 U.S.C. § 251(c)(2). Citizens argued that a reading of section 47 U.S.C. § 251(c)(6) in conjunction with 47 U.S.C. § 251(g) makes clear that collocation under the Telecommunications Act of 1996 is only available for physical interconnection of local (non-access) traffic and access to UNEs, while interexchange carriers (“IXCs”) (and presumably their surrogates) are left to the pre-1996 access charge regime.

On November 22, 2004, at a regularly scheduled Authority Conference, the voting panel assigned to this Docket voted unanimously to appoint a Hearing Officer in this matter for the purposes of preparing the Docket for oral argument and requiring the parties to file briefs by December 6, 2004. On November 23, 2004, the Hearing Officer issued an *Order Regarding*

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<sup>1</sup> 47 U.S.C. § 153(44) defines a telecommunications carrier as, “any provider of telecommunications services, except that such term does not include aggregators of telecommunications services.” 47 U.S.C. § 153(46) defines telecommunications service as, “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.”

*Briefing and Oral Argument.* There, the Hearing Officer declared the sole issue for briefing and oral argument to be whether Citizens must provide physical collocation to Iris pursuant to 47 U.S.C. § 251(c)(6). The Hearing Officer ordered that briefs be filed no later than December 6, 2004 and oral arguments be held on December 16, 2004. On December 6, 2004, Citizens filed the *Citizens Telecommunications Company of Tennessee L.L.C.'s Response to Petition and Motion to Dismiss* and *Citizens Telecommunications Company of Tennessee L.L.C.'s Brief in Support of Its Motion to Dismiss*. Citizens continued to maintain that a conjunctive reading of 47 U.S.C. § 251(c)(6) and 47 U.S.C. § 251(g) reveals that Iris is not entitled to collocation. Additionally, Citizens asserted that Iris is not entitled to collocation, because Iris is not seeking collocation for the purposes permitted by statute.

Also, on December 6, 2004, Iris filed the *Brief of Petitioner Iris Networks*. Iris argued that while it is neither a CLEC nor an IXC, it is a telecommunications carrier as used in 47 U.S.C. § 251(c)(2). Iris argued that by providing telecommunications transport to its CLEC and IXC customers, it is providing telecommunications services to “such classes of users as to be effectively available to the public.”<sup>2</sup>

The parties presented oral arguments before the Authority on December 16, 2004. At the conclusion of oral arguments, the Hearing Officer asked the parties to brief whether certain paragraphs contained in the Federal Communication Commission’s (FCC) *First Report and Order*<sup>3</sup> have been changed or amended by the FCC or any courts.<sup>4</sup> The parties were ordered to file the briefs on January 10, 2005. In the months that ensued, the parties filed several letters

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<sup>2</sup> 47 U.S.C. § 153(46).

<sup>3</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 and *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, *First Report and Order*, 11 FCC Rcd 15499, 15514, ¶ 26, 15545, ¶ 87, 15546, ¶ 89, 15546, ¶ 90, 15594, ¶ 184, 15594-15595, ¶ 185, 15998, ¶ 190, 15998-15999 ¶ 191 and 15636, ¶ 270 (1996).

<sup>4</sup> Transcript of Proceedings, pp. 38-39 (December 16, 2004)

with the Authority requesting time extensions in which to file post-hearing briefs due to the fact that the parties had entered into settlement discussions. Subsequent to such requests, the Hearing Officer issued orders granting the requested time extensions.

On May 4, 2005, the Hearing Officer assigned to this Docket issued a *Notice of Filing* which requested that the parties inform the Authority, in writing, of the status of the settlement discussions in this matter, or in the alternative, file post-hearing briefs. The Hearing Officer requested that the filings be made no later than May 15, 2005. On May 12, 2005, the parties filed an *Agreement for Collocation* (the “*Agreement*”) which was the product of the parties’ negotiations.

#### **July 11, 2005 Authority Conference**

At a regularly scheduled Authority Conference held on July 11, 2005, the voting panel assigned to this Docket considered the negotiated *Agreement* filed with the Authority on May 12, 2005. Based on a review of the *Agreement*, the record in this matter and the standards for review set forth in 47 U.S.C. § 252, the panel unanimously approved the *Agreement* and made the following findings and conclusions:

- 1) The Authority has jurisdiction over public utilities pursuant to Tenn. Code Ann. § 65-4-104 (2004).
- 2) The *Agreement* is in the public interest as it assists in providing consumers with alternative sources of telecommunications services within the service area of Citizens.
- 3) The *Agreement* is not discriminatory to telecommunications service providers that are not parties hereto.
- 4) 47 U.S.C. § 252(e)(2)(A) provides that a state commission may reject a negotiated agreement only if it “discriminates against a telecommunications carrier not a party to the


agreement” or if the implementation of the agreement “is not consistent with the public interest, convenience or necessity.” Unlike arbitrated agreements, a state commission may not reject a negotiated agreement on the grounds that the agreement fails to meet the requirements of 47 U.S.C. §§ 251 or 252(d).<sup>5</sup> Thus, although the Authority finds that neither ground for rejection of a negotiated agreement exists, this finding should not be construed to mean that the agreement is consistent with §§ 251 or 252(d) or, for that matter, previous Authority decisions.

5) No person or entity has sought intervention in this Docket.

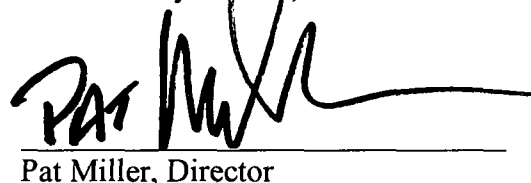
6) The *Agreement* is reviewable by the Authority pursuant to 47 U.S.C. § 252 and Tenn. Code Ann. § 65-4-104 (2004).

**IT IS THEREFORE ORDERED THAT:**

The *Agreement for Collocation* negotiated between Citizens Telecommunications Company of Tennessee L.L.C. and Tennessee Independent Telecommunications Group L.L.C. d/b/a Iris Networks is approved and is subject to the review of the Authority as provided herein.

  
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Ron Jones, Chairman

  
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Deborah Taylor Tate, Director

  
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Pat Miller, Director

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<sup>5</sup> See 47 U.S.C. § 252(e)(2)(B)